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उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.271/2004

[Single Bench: Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANT (In Jail)		Tekuram Sahu, Aged 36 years S/o. Punaram Sahu R/o. Village Paahanda, P.S. Berla, District Durg (C.G.)
	Vs	
RESPONDENT		The State of Chhattisgarh, Through P.S. Berla, District Durg (C.G.)

Present:

Mrs. Usha Chandrakar, Counsel for the appellant.

Mr. N.K. Mehata, Panel Lawyer for the State

ORAL JUDGMENT

(21st September, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 12th January 2004 passed in S.T. No.294/02 whereby learned Additional Sessions Judge, Bemetara, District Durg has convicted the appellant under Section 307 of the IPC and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

The appellant and three other accused persons namely Tulsi, Mohan & Jagannath were prosecuted for the offence punishable under

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Sections 120-B & 307 of the I.P.C. Charge under Sections 120-B & 307 of the IPC was framed against the present appellant, whereas, other accused persons were charged under Section 120-B of the IPC only. The allegation against the accused persons was that they entered into a conspiracy of committing murder of Girwar Sahu (PW-13) and as a result of above conspiracy on 25/08/2002 in village Pahanda accused Tekuram assaulted Girwar by an axe over his head and caused grievous injuries.

According to the case of the prosecution all the four accused persons are resident of village Pahanda, they along with Girwar Sahu consumed liquor in the bus stand and thereafter they took the victim Girwar Sahu near the shop of Banshi Kewat where accused Mohan brought an axe and handed over the same to accused Teku by which Teku assaulted two-three times to the victim as a result of which he fell on the ground. The incident was witnessed by Gajanand (PW-5), Lakahan (PW-6) and Banshiram (PW-10).

During investigation the victim was sent to the Community Health Centre, Berla where Dr. M.C. Patela (PW-8) examined him and gave his injury report of Ex.P-11. The victim was referred to the District Hospital, Durg for further treatment. X-ray report of injury is Ex.P-14. The weapon of offence i.e. axe was taken into possession vide Ex.P-6 on the memorandum (Ex.P-4) of accused Tekuram. Girwar

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Sahu was admitted in the District Hospital, Durg on 26/8/2002 and the bed-head ticket is Ex.P-21.

After completion of investigation, charge sheet was filed in the Court of the Judicial Magistrate First Class, Bemetara and after committal, the same was received on transfer for trial by learned Additional Sessions Judge. During trial, the prosecution examined sixteen witnesses. The accused persons in their statement recorded under Section 313 of Cr.P.C. have pleaded innocence and false implication. They have also examined Smt. Sumitra (DW-1) in their defence. However, learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the appellant herein, as mentioned in Para 1 of this judgment. However, other three accused persons have been acquitted of all the charges.

Learned counsel for the appellant submits that none of the eyewitnesses has supported the case of the prosecution and they have been declared hostile. Conviction of the appellant is based on the solitary testimony of victim Girwar Sahu, however, in his deposition before the Court and diary statement there is material discrepancy, which makes the statement of this witness doubtful. Girwar Sahu has admitted in his examination before the Court that after the incident he became unconscious and he was not able to speak. Even other

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witness namely Gajanand (PW-5) has stated that Girwar was not able to speak after the incident and therefore the version of complainant Yogesh Kuamr (PW-1) that Girwar informed him that Teku assaulted him is false . She further submits that injury present over the head of Girwar was no sufficient to cause his death in the ordinary course of nature.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

Conviction of appellant is based on the statement of injured witness Girwar Sahu (PW-13) and the statement of Dr. M.C. Patela (PW-8) and Dr. Khurshid Alam (PW-16), who have treated the victim as indoor patient in the District Hospital and proved the injury report. Dr. M.C. Patela has stated in his deposition that he examined Girwar Sahu on 25/8/2002 in the Community Health Centre, Berla and found one lacerated wound obliquely transverse on the right temporal region of head, one incised wound below the neck on the right side and one incised wound on the occipital region of the head. He advised for X-ray and further referred the victim to the District Hospital for treatment. After examining the X-ray plates of victim, this witness has further given the report of Ex.-P-14 whereby depressed fracture

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was found on the right parietal region. He also opined that the injuries present over the victim Girwar Sahu were sufficient to cause death in ordinary course of nature.

P.W.-16 Dr. Khurshid Alam, a doctor in the Medical College Hospital, Raipur, has stated that Girwar Sahu was brought in his hospital for the first time on 9/9/2002 and he was again brought on 13/9/2002 when he was admitted. On 17/9/2002 operation over his skull was performed and in the said operation pieces of bone were found over skull, which they fixed after operation. The injuries were sufficient to cause death in the ordinary course of nature. Girwar Sahu was discharged from the hospital on 28/9/2002.

Thus, from the evidence of above two Doctors it is established beyond reasonable doubt that the injuries present over the person of the victim was sufficient to cause his death in the ordinary course of nature.

Girwar Sahu (PW-13) has stated that on 25/8/2002 at about 12:30 in the day Tekuram assaulted him by an axe, he assaulted thrice on the right side of his head above the ear in the village, Pahanda, near boring and thereafter all the accused persons fled from there considering him dead. Before the incident he consumed liquor with the accused persons and thereafter when they reached near the house of Mohan, Teku brought an axe from somewhere and assaulted him from

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behind as a result of which he fell down. What others did he does not know. The assault was made on account of old animosity, as the accused suspected that Manoj assaulted him at his behest some ten days back before the incident. He regained consciousness in the Government Hospital where he was remained admitted for a period of 11 days and thereafter he was referred to the Medical College Hospital, Raipur where he remained admitted for a period of 17 days. In the cross-examination, this witness has admitted that they consumed liquor in the morning and the incident was witnessed by Gajanand, Mutru, Lakhan & Tulsi. He stuck to his claim that Teku assaulted him with an axe from the sharp edge side as a result of which he immediately fainted. In Paragraph-7 he has denied the suggestion that under the influence of liquor he fell over the boring as a result of which he sustained the above injury. He has further denied that both of them quarreled under the influence of liquor. Statement of this witness is corroborated from the statement of Yogesh Kumar (PW-1) who has stated that on 25/8/2002 in the after noon at about 2:00 p.m. when he reached home, his wife told him about the quarrel whereupon he went near the house of Tulsi and saw Girwar Sahu lying drenched in blood and he was murmuring '*Teku-Teku*'. He lodged the report of Ex.P-1. The other eyewitnesses namely Gajanand (PW-5),

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Lakhan (PW-6) & Banshi (PW-10) have not supported the case of the prosecution and they have been declared hostile.

Victim Girwar Sahu and Yogesh Kumar have been cross-examined in detail, however, the defence could not impeach the credibility of these witnesses and the trial court relying upon the statement of Girwar & Yogesh and also considering that their statement is duly corroborated from the promptly lodged FIR of Ex.P-23 and further corroborated by the statement of Dr. M.C. Patela (PW-8) who has found corresponding injuries over the person of the victim, has convicted the appellant. Therefore, in the considered opinion of this Court the prosecution has been able to establish the involvement of the appellant in the crime in question beyond all reasonable doubts and the court below has not committed any illegality or infirmity in convicting and sentencing the appellant under Section 307 of the IPC. However, taking into consideration the circumstances under which the offence is committed by the appellant and also considering that other accused persons have been acquitted from the charge of conspiracy by extending them benefit of doubt, this Court is of the considered opinion that ends of justice would be served if the sentence imposed upon the appellant under Section 307 of the IPC is modified and he is sentenced to undergo R.I. for 7 years instead of R.I. for 10 years.

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	In the result, the appeal of the appellant is partly allowed. Conviction of the appellant under Section 307 of the IPC is maintained, however, sentenced imposed upon him under that section is modified and now the appellant is sentenced to undergo R.I. for 7 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months **Sd/-** **Dhirendra Mishra** **Judge**	